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UNITED STATES DISTRICT COURT  
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NORTHERN DISTRICT OF CALIFORNIA  
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OAKLAND DIVISION

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12 THE CENTER FOR INVESTIGATIVE ) Case No. 18-cv-02414-DMR  
REPORTING and JENNIFER GOLLAN, )  
13 Plaintiffs, )  
14 v. )  
15 UNITED STATES DEPARTMENT OF )  
LABOR, )  
16 Defendant. )  
17  
18

19 Pursuant to this Court's Order dated December 8, 2018, ECF No. 16, Plaintiffs The Center For  
20 Investigative Reporting and Jennifer Gollan (collectively referred to as "CIR") and Defendant United  
21 States Department of Labor ("DOL") respectfully submit this Joint Status Report in this Freedom of  
22 Information Act ("FOIA") case.

23 This case concerns CIR's FOIA request for certain documents from DOL. On July 26, 2018, this  
24 Court vacated the initial case management conference and all associated all dates and deadlines pending  
25 the resolution of a *Public Citizen Foundation v. DOL, et al.*, Case No. 18-cv-00117 (D.D.C.), a FOIA  
26 case filed in the District Court for the District of Columbia on January 19, 2018 ("DC Case"). In the DC  
27 Case, a different plaintiff requested the same documents from DOL that are at issue in this case, and  
28 DOL has opposed release of those documents in that case on the same grounds that will be asserted by

1 DOL in this case. Because summary judgment briefing in the DC Case was already underway, this  
 2 Court, pursuant to the parties' request, stayed proceedings pending the resolution of the DC Case. ECF  
 3 No. 14. In both cases, DOL initially withheld the information under Exemption 7(e). DOL  
 4 subsequently determined that the information should be withheld under Exemption 4. In a status report  
 5 filed on December 6, 2018, the parties reported that the DC Case had not yet been resolved but that  
 6 briefing on cross motions for summary judgment had been completed. ECF No. 16. The Court ordered  
 7 the parties to file a proposed briefing schedule upon resolution of the DC Case and, in the event the DC  
 8 Case was not yet resolved, to file an updated joint status report by February 28, 2019. *Id.*

9 The parties report that the summary judgment motion in the D.C. Case remains fully briefed but  
 10 has not yet been decided. On January 7, 2019, the case was referred to a Magistrate Judge for full case  
 11 management, including the preparation of a report and recommendation with respect to all pending  
 12 potentially dispositive motions. Counsel for DOL in the D.C. Case has no further information regarding  
 13 when the summary judgment motion may be resolved.

14 Since the last status report, the parties have learned that the Supreme Court has granted a petition  
 15 for certiorari in a case involving the interpretation of FOIA Exemption 4. In that case, *Food Marketing*  
 16 *Institute v. Argus Leader Media*, Docket No. 18-481 ("Argus Leader"), the Supreme Court will consider  
 17 (1) whether the statutory term "confidential" as used in Exemption 4 "bears its ordinary meaning, thus  
 18 requiring the government to withhold all 'commercial or financial information' that is confidentially  
 19 held and not publicly disseminated—regardless of whether a party establishes substantial competitive  
 20 harm from disclosure," and (2) in the alternative, the requirements of the "substantial-competitive-harm"  
 21 standard should the Supreme Court decide to retain that test. The Supreme Court has set argument in  
 22 *Argus Leader* for April 22, 2019, and the decision should be handed down by the end of the term in  
 23 June.

24 The decision in *Argus Leader* may abrogate or modify the standard for determining  
 25 confidentiality under Exemption 4 in this Circuit. Although the parties disagree about whether  
 26 Exemption 4 is applicable to the documents, they agree that briefing in this case should await the  
 27 Supreme Court's resolution of *Argus Leader* in order to provide the Court with the benefit of the  
 28 Supreme Court's decision to the extent it may be relevant.

1 For the reasons stated above, the parties respectfully request that the Court continue to stay all  
2 dates and deadlines in this case. Upon the Supreme Court's ruling in *Argus Leader*, the parties will  
3 promptly meet and confer regarding a briefing schedule for anticipated cross-motions for summary  
4 judgment and will file a proposed briefing schedule with the Court within five days.

5 DATED: February 28, 2019

Respectfully submitted,

6 DAVID L. ANDERSON  
7 United States Attorney

8 /s/ Pamela T. Johann  
9 PAMELA T. JOHANN  
10 Assistant United States Attorney

11 Attorneys for Defendant

12 DATED: February 28, 2019

13 THE CENTER FOR INVESTIGATIVE  
14 REPORTING

15 /s/ D. Victoria Baranetsky  
16 D. VICTORIA BARANETSKY

17 Attorneys for Plaintiffs

18 \* I, Pamela T. Johann, hereby attest that I have obtained the concurrence in the filing of this document  
19 from D. Victoria Baranetsky.

20 /s/ Pamela T. Johann  
21 PAMELA T. JOHANN

## [PROPOSED] ORDER

Pursuant to the Joint Status Report of the parties and for good cause shown, IT IS HEREBY ORDERED that:

1. All dates and deadlines in this case are STAYED pending the decision of the United States Supreme Court in *Food Marketing Institute v. Argus Leader Media*, Docket No. 18-481 (“*Argus Leader*”);

2. Upon the resolution of *Argus Leader*, the parties shall promptly file with the Court a proposed briefing schedule for cross-motions for summary judgment.

IT IS SO ORDERED.

Dated: \_\_\_\_\_

HON. DONNA M. RYU  
United States Magistrate Judge